

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT)
DEPARTMENT,)**

Complainant,)

v.)

**NORTHWEST NEW MEXICO)
REGIONAL SOLID WASTE)
AUTHORITY,)**

Respondent.)

No. SWB 08-40 (CO)

**ADMINISTRATIVE ORDER REQUIRING
COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Solid Waste Act ("SWA"), NMSA 1978, §§ 74-9-1 to 74-9-42, the Secretary of the New Mexico Environment Department ("Secretary"), acting through his designee, the Director of the Environmental Protection Division, issues this Administrative Compliance Order ("Order") to the Northwest New Mexico Regional Solid Waste Authority ("Respondent"), to assess a civil penalty for violations of the SWA and the New Mexico Solid Waste Rules ("SWR"), 20.9.2 – 20.9.10 NMAC, and to compel compliance with the SWA and the SWR.

FINDINGS OF FACT

1. Complainant New Mexico Environment Department ("NMED") is an agency of the executive branch of New Mexico state government and is charged with the administration and enforcement of the SWA and the SWR.

2. Respondent is a regional solid waste authority doing business in New Mexico, with offices located at 101 Red Mesa Bluffs Drive, Thoreau, New Mexico 87323. Respondent

provides collection and disposal of solid waste within Cibola and McKinley Counties, including the Cities of Gallup and Grants, the Village of Milan, and contiguous communities.

3. Respondent is a “person,” as defined in the SWA, NMSA 1978, § 74-9-3.I, and 20.9.2.7.P(2) NMAC.

4. Pursuant to 20.9.2.7.S(11) NMAC, the Red Rocks Regional Landfill is a “solid waste facility.”

5. The Red Rocks Regional Landfill (“facility” or “landfill”) is located at 101 Red Mesa Bluffs Drive, Thoreau, New Mexico (N35°25.261’, W108°07.287’).

6. Respondent owns and operates the facility, which was permitted by NMED on October 20, 1995, Permit No. SWM-172203 (“permit”).

7. Under the terms of its permit, the facility is authorized to accept certain special wastes, including industrial solid waste, petroleum contaminated soil, and certain wastes regulated by the New Mexico Oil Conservation Division (“OCD”).

8. Pursuant to 20.9.2.7.S(13) NMAC, “special waste” means “solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety,” and includes industrial solid waste, petroleum contaminated soil and certain OCD wastes.

9. The landfill’s permit and two special waste disposal management plans produced by the Durango-McKinley Paper Company and Western (Giant) Refinery identify and describe the test procedures or regulatory guidance used to determine the physical and chemical characteristics of all materials to be stored, transported to, or disposed at the landfill.

10. Pursuant to 20.9.2.8.C NMAC, “[a]ny person who stores...recyclable materials...shall store such materials in a manner that prevents blowing litter, insect and rodent harborage and does not create a public nuisance or public health hazard.”

11. Pursuant to 20.9.2.8.D NMAC, “[a]ny person who generates, stores, processes, transports or disposes of solid waste shall do so in a manner that does not create a public nuisance.”

12. Pursuant to 20.9.2.10.B NMAC, “[a]ny person who generates, stores, processes, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.”

13. Pursuant to 20.9.3.20.A NMAC, “[a]ny terms or conditions of the permit shall be enforceable to the same extent as a regulation of the [Environmental Improvement Board]...”.

14. Pursuant to 20.9.5.8.A(1) NMAC, owners and operators of each solid waste facility shall “operate the facility in a manner that does not create a public nuisance or create a potential hazard to public health, welfare or the environment...”.

15. Pursuant to 20.9.5.8.A(2) NMAC, owners and operators of each solid waste facility shall “control and mitigate odor and litter...”.

16. Pursuant to 20.9.5.8.B(2) NMAC, owners and operators of a solid waste facility shall “implement a plan approved by the secretary to inspect loads to detect and prevent the disposal of unauthorized waste...”.

17. Pursuant to 20.9.5.9.A(1) NMAC, all municipal and special waste landfill owners and operators shall “confine the working face to the smallest practical area...”.

18. Pursuant to 20.9.5.9.C(2) NMAC, all municipal and special waste landfill owners and operators shall implement a routine methane monitoring program in which “the minimum frequency of monitoring shall be quarterly...”.

19. Pursuant to 20.9.5.9.K NMAC, all municipal and special waste landfill owners and operators shall “collect and treat leachate by a method approved by the secretary and maintain records on a quarterly basis of leachate generation and treatment...”.

20. Pursuant to 20.9.5.9.L NMAC, all municipal and special waste landfill owners and operators shall “control litter...”.

21. Pursuant to 20.9.5.9.N NMAC, all municipal and special waste landfill owners and operators shall “cover the active face with a six-inch layer of earth or specifically approved alternate daily cover at the conclusion of each day’s operation or more often as conditions may dictate...”.

22. Pursuant to 20.9.5.9.O(1) NMAC, all municipal and special waste landfill owners and operators shall provide intermediate cover which shall be “at least one foot thick, or other specifically approved thickness...”.

23. Pursuant to 20.9.5.9.O(2) NMAC, all municipal and special waste landfill owners and operators shall provide intermediate cover which shall be “placed on all areas of a landfill that have not received waste for 60 days or longer, or have not reached final elevation...”.

24. Pursuant to 20.9.5.9.P(1) NMAC, all municipal and special waste landfill owners and operators shall, if diversion of recyclable materials is conducted, “perform the diversion in a sanitary manner, with storage confined to an area remote from the operating area of the landfill, and in a manner which does not...create a nuisance, litter problem, vector harborage, or public health hazard...”.

25. Pursuant to 20.9.5.9.P(2) NMAC, all municipal and special waste landfill owners and operators shall, if diversion of recyclable materials is conducted, “remove all recyclable materials from the facility in a timely manner such that the area does not become a permanent storage area...”.

26. Pursuant to 20.9.5.9.P(3) NMAC, all municipal and special waste landfill owners and operators shall, if diversion of recyclable materials is conducted, “store recyclables in such a manner that the area is clean, materials are separated by type, and the potential for contamination is minimized...”.

27. Pursuant to 20.9.5.16.A(11) NMAC, owners and operators of solid waste facilities shall make and maintain an operating record during the active life of the facility, for each day that operations, monitoring, or closure occurs, including “the type (including special waste) and weight or volume of each load of solid waste received...”.

28. Pursuant 20.9.5.16.E NMAC, “[a]ll records and plans required by 20.9.2 – 20.9.10 NMAC shall be furnished upon request and made available at all reasonable times for inspection by the secretary.”

Inspection of Red Rocks Regional Landfill, June 4 and 5, 2008

29. NMED enforcement officers conducted an inspection of the Red Rocks Regional Landfill on June 4 and 5, 2008 to determine compliance with the SWR.

30. During the June 4 and 5, 2008 inspection, a NMED enforcement officer observed and recorded, or otherwise verified that Respondent:

A. failed to apply a six-inch layer of earth or approved alternate daily cover to the active face at the conclusion of each day's operations for a period of fourteen days, beginning on or before May 21, 2008 to on or after June 3, 2008. The uncovered waste was observed upon several disposal cells of the landfill. The uncovered waste posed a risk of exposure to humans and other environmental receptors, provided harborage for disease vectors and greatly increased the potential for windblown litter or fire;

B. failed to apply and subsequently maintain a one foot layer of intermediate cover upon an area of the landfill which had not received waste for a period of 60 days or reached final elevation. The absence of intermediate cover was primarily noted on the south and west sides of Cell No. 8 and the south side of Cell No. 7, neither of which had received any solid waste for disposal within the 60 days immediately prior to June 5, 2008, as verified by the landfill manager. The failure to maintain intermediate cover had resulted in moderate erosion with exposed waste;

C. failed to control litter, as evidenced by an excessive amount of windblown litter that was present approximately one half mile beyond the landfill's east and northeast perimeter fencing;

D. failed to confine the working face to the smallest practical volume, as evidenced by the presence of solid waste disposed over the top of several disposal cells (constituting the active working face) and the failure to compact and apply daily cover upon the solid waste for a period of 14 days, beginning on or before May 21, 2008 to on or after June 3, 2008. The large working face and uncovered solid waste posed a risk of exposure to humans and

other environmental receptors, provided harborage for disease vectors and greatly increased the potential for windblown litter or fire;

E. failed to store several hundred thousand scrap tires (recyclables) in a safe and sanitary manner, as evidenced by the excessive amount of scrap tires at the facility, several tire storage areas with dried vegetation within or adjacent to the storage areas, and the mixing of solid waste with loose scrap tires – particularly within or adjacent to the scrap metal recyclables storage area. Such storage constituted a nuisance, provided harborage for disease vectors and greatly increased the potential for windblown litter or fire;

F. failed to remove scrap tires (recyclables) in a timely manner, as evidenced by the long-term, on-site storage of several hundred thousand scrap tires at the landfill. The permanent storage of scrap tires was first documented as a violation during the NMED inspection of the landfill in 2002, after which the number of scrap tires stored at the landfill continued to increase;

G. failed to store recyclables in a safe and sanitary manner by allowing the white goods and scrap metal recycling storage areas to become intermixed with municipal solid waste. An estimated 3,000 cubic yards of solid waste, including construction and demolition debris, was observed intermixed with recyclable materials. The landfill manager stated that the solid waste had been upon the ground at the recycling area for approximately one year and that he had recently allowed two or three additional loads of solid waste to be tipped along the west perimeter of the area;

H. failed to perform routine methane monitoring during the fourth quarter of 2007 and the first quarter of 2008, as evidenced by Respondent's inability to provide records documenting methane monitoring at the landfill and the landfill manager's admission that methane monitoring had not been performed for an undetermined number of consecutive quarters;

I. failed to collect leachate by a method approved by the Secretary, resulting in the discharge of leachate onto the ground in an unlined area of the landfill. The NMED enforcement officers observed evidence of the release of leachate directly onto the ground from

holes drilled into the sides of concrete leachate collection vaults. Staining indicated the spillage of leachate from the collection vaults impacting the ground surface. Such release of leachate is contrary to the intent of the SWR and the landfill's permit, as leachate contains soluble, suspended, miscible and often corrosive materials removed from the solid waste, and thus poses a direct threat to the environment if released onto any unlined portion of the landfill;

J. failed to implement a plan (Waste Screening Plan) to inspect loads to detect and prevent the disposal of unauthorized waste. The landfill's scale house personnel were unfamiliar with the facility's plan, waste screening operations and procedures, and they lacked any general knowledge regarding the proper execution of load inspections;

K. failed to comply with the terms of the approved 2005 Western (Giant) disposal management plan ("DMP") by accepting special wastes (OCD wastes) for disposal at the landfill without first ensuring that the physical and chemical characteristics of the special wastes had been determined through laboratory analyses performed on an annual basis, as required under the DMP. OCD wastes authorized for disposal at the landfill from the Giant (Western) Refinery included Sulfur Byproducts, Spent FCC (fluid cracking catalysts), Spent Activated Alumina, and Cooling Tower Sludge. Although the landfill had not accepted any Sulfur Byproducts or Cooling Tower Sludge from the Giant (Western) Refinery during 2008, it had accepted Spent FCC and Spent Activated Alumina wastes for disposal. According to the DMP, which was approved by the NMED's Solid Waste Bureau on May 2, 2005, the materials listed "shall be tested at least annually to verify that the characteristics of the materials have not changed" and "[i]nformation on the laboratory or other testing results will be sent to the [NMED] for their review." A review of special waste manifests obtained during the inspection indicated that seven individual shipments of OCD waste that were not properly characterized in accordance with the approved DMP were accepted for disposal by the landfill during 2008. The seven shipments included: Spent FCC Catalyst – Manifest No. C0672 (2/28/2008), Manifest No. C0693 (4/18/2008), Manifest No. WNR1006 (5/15/2008), Manifest No. WNR1002 (5/23/2008)

and Manifest No. WNR1001 (5/23/2008); and Spent Activated Alumina – Manifest No. C0669 (1/18/2008) and Manifest No. C0668 (4/11/2008);

L. failed to comply with the terms of the approved DMP for OCD special wastes generated at Giant (Western) Refinery by failing to record or incorporate into the landfill's operating record which disposal cells received OCD special wastes, including the annotation of X, Y, and Z coordinates. During the inspection, it was determined that the landfill's management was unfamiliar with the foregoing DMP requirements and that for a period of approximately three years (between 2005 and 2008), the landfill's operator failed to record and place within the operating record the disposal location of OCD special wastes, including the use of X, Y, and Z coordinates. A review of special waste manifests indicated the landfill's receipt and disposal of seven separate shipments of OCD special wastes during 2008. The seven shipments included: Spent FCC Catalyst – Manifest No. C0672 (2/28/2008), Manifest No. C0693 (4/18/2008), Manifest No. WNR1006 (5/15/2008), Manifest No. WNR1002 (5/23/2008) and Manifest No. WNR1001 (5/23/2008); and Spent Activated Alumina – Manifest No. C0669 (1/18/2008) and Manifest No. C0668 (4/11/2008);

M. failed to furnish requested records and plans required by the SWR for inspection, as evidenced by the landfill manager's inability to locate and produce the facility's operating record, special waste DMPs (for wastes generated by either the Western Refinery or the Durango-McKinley paper plant), financial assurance documentation, special waste manifests documenting disposal of the Durango-McKinley paper pulp, a landfill gas management or methane monitoring plan, quarterly methane monitoring results, an approved ground water monitoring system plan and/or ground water monitoring plan, a leachate management plan, and an approved plan to inspect loads to detect and prevent the disposal of unauthorized waste (waste screening plan);

N. disposed of hundreds of truck loads of special waste (paper pulp from the Durango-McKinley plant) at the landfill without accompanying special waste manifests. Representatives from the Durango-McKinley Paper Company provided a listing of paper pulp

shipments to the landfill. The provided records indicated that from January 2008 through May 2008, 278 truck loads of paper pulp – a special waste – was transported to the landfill, without accompanying special waste manifests. [Note: Disposal receipts subsequently provided to the NMED by the landfill manager corroborated the landfill's receipt of 49 separate truck loads of this special waste (paper pulp) during May 2008]. The landfill's acceptance of unmanifested special waste indicates waste mismanagement and the failure to adhere to the requirements of the SWR and the terms and conditions of the facility's permit; and

O. operated the landfill in an unsafe and improper manner, causing a public nuisance and creating a potential hazard to public health, welfare or the environment, as evidenced by each of the violations listed in this Order (Violation Nos. 1-14), with emphasis on the following: (1) a confirmed 14-day accumulation of solid waste (or roughly 125 tons based on the facility's monthly average) that was intentionally left uncovered; (2) several hundred thousand loose tires remaining in storage at the landfill, increasing in numbers for years and constituting a permanent storage area for scrap tires; (3) intermixing of many of the landfill's scrap tire storage areas with solid waste, including substantial mixing of solid waste with scrap tires adjacent to the scrap metal recycling area; (4) tipping and mixing of approximately 3,000 cubic yards of solid waste with scrap metal recyclables upon the ground at the scrap metal recycling area; (5) routine placing of special wastes upon the active face without first characterizing them for their physical and chemical properties on at least an annual basis and without utilizing X, Y, and Z coordinates to document waste location in the landfill's operating record; (6) the working face of the landfill was oversized at the time of the inspection with no effort undertaken to limit its size or compact the waste; (7) the failure to prevent, control, or abate large amounts of litter which had blown far beyond the landfill's perimeter; (8) failure of landfill personnel or a third party to conduct routine quarterly methane monitoring; (9) failure to correctly manage leachate by preventing it from discharging to areas outside of the liner and implement a working mechanism to measure the amount of leachate head atop the liner; (10) failure of the operator to ensure that waste screening inspections (load inspections) were conducted properly to effectively screen waste and prevent the disposal of

unauthorized waste; (11) acceptance and disposal of hundreds of loads of special waste (Durango/McKinley paper pulp) without accompanying special waste manifests; and (12) failure of the operator to comply with nearly all recordkeeping requirements.

CONCLUSIONS OF LAW

31. Paragraphs one (1) through 30 are incorporated herein by reference.

Violation No. 1

Failure to Apply Daily Cover

32. In violation of the SWR, 20.9.5.9.N and 20.9.3.20.A NMAC, and contrary to Section 402.N of the facility's permit, Respondent failed to apply daily cover at the Red Rocks Regional Landfill, one instance of violation, occurring on or before May 21, 2008 to on or after June 3, 2008 (a period of 14 days).

Violation No. 2

Failure to Apply Intermediate Cover

33. In violation of the SWR, 20.9.5.9.O(1), 20.9.5.9.O(2) and 20.9.3.20.A NMAC, and contrary to Section 402.O of the facility's permit, Respondent failed to apply or maintain intermediate cover at the Red Rocks Regional Landfill, one instance of violation, occurring on or before April 6, 2008 to on or after June 4, 2008 (a period of 60 days).

Violation No. 3

Failure To Control Litter

34. In violation of the SWR, 20.9.5.8.A(2), 20.9.5.9.L and 20.9.3.20.A NMAC, and contrary to Section 402.L of the facility's permit, Respondent failed to control litter at the Red Rocks Regional Landfill, one instance of violation, occurring on June 4, 2008.

Violation No. 4

Failure to Confine the Working Face to the Smallest Practical Area

35. In violation of the SWR, 20.9.5.9.A(1) and 20.9.3.20.A NMAC, and contrary to Section 402.A of the facility's permit, Respondent failed to confine the working face of the landfill to the smallest practical area at the Red Rocks Regional Landfill, one instance of violation, occurring on or before May 21, 2008 to on or after June 3, 2008 (a period of 14 days).

Violation No. 5

Failure to Store Scrap Tires in a Safe and Sanitary Manner

36. In violation of the SWR, 20.9.5.9.P(1) and 20.9.3.20.A NMAC, and contrary to Section 401.B.1 of the facility's permit, Respondent failed to operate the tire storage area in a safe and sanitary manner at the Red Rocks Regional Landfill, as evidenced by the excessive amount of scrap tires at the facility, the presence of dried vegetation within or adjacent to several of the storage areas and the mixing of solid waste with the scrap tires – particularly within or adjacent to the scrap metal recyclables storage area, one instance of violation, occurring on or before April 6, 2008 to on or after June 4, 2008 (a period of 60 days).

Violation No. 6

Failure to Remove Scrap Tires in a Timely Manner

37. In violation of the SWR, 20.9.5.9.P(2) and 20.9.3.20.A NMAC, and contrary to Section 402.P.2 of the facility's permit, Respondent failed to remove scrap tires in a timely manner, as evidenced by the presence of several hundred thousand tires that have been in storage at the Red Rocks Regional Landfill for several years, constituting a permanent storage area that has been documented by the NMED since 2002, one instance of violation, occurring on or before April 6, 2008 to on or after June 4, 2008 (a period of 60 days).

Violation No. 7

Failure to Store Recyclables (Scrap Metal) in a Safe and Sanitary Manner

38. In violation of the SWR, 20.9.2.8.C, 20.9.5.8.A(1), 20.9.5.9.P(1), 20.9.5.9.P(3) and 20.9.3.20.A NMAC, and contrary to Sections 401.B.1 and 402.P.2 of the facility's permit, Respondent failed to store recyclables in a safe and sanitary manner, as evidenced by the mixing and non-segregated storage of recyclable metals with approximately 3,000 cubic yards of solid

waste at the recyclable metals storage area of the Red Rocks Regional Landfill, one instance of violation, occurring on or before April 6, 2008 to on or after June 4, 2008 (a period of 60 days).

Violation No. 8

Failure to Conduct Methane Monitoring

39. In violation of the SWR, 20.9.5.9.C(2) and 20.9.3.20.A NMAC, and contrary to Section 402.C of the facility's permit, Respondent failed to conduct methane monitoring for two consecutive quarters (fourth quarter of 2007 and first quarter of 2008) at the Red Rocks Regional Landfill, two instances of violation, occurring on January 1, 2008 and April 1, 2008.

Violation No. 9

Failure to Collect Leachate by a Method Approved by the Secretary

40. In violation of the SWR, 20.9.5.9.K and 20.9.3.20.A NMAC, and contrary to Section 402.K of the facility's permit, Respondent failed to properly collect and manage leachate, as evidenced by the discharge of leachate directly onto the ground from holes drilled into the sides of concrete leachate collection vaults, one instance of violation, occurring on or before June 4, 2008.

Violation No. 10

Failure to Implement a Waste Screening Plan

41. In violation of the SWR, 20.9.5.8.B(2) and 20.9.3.20.A NMAC, and contrary to Section 401.B.4 of the facility's permit, Respondent failed to implement an approved plan (Waste Screening Plan) to inspect loads to detect and prevent the disposal of unauthorized waste, one instance of violation, occurring on or before June 4, 2008.

Violation No. 11

Acceptance of Improperly Characterized Special Waste Contrary to the DMP

42. In violation of the SWR, 20.9.2.10.B and 20.9.3.20.A NMAC, and contrary to Section 704.A of the facility's permit, Respondent failed to comply with the terms of the approved 2005 Western (Giant) DMP by accepting special wastes (OCD wastes) at the Red Rocks Regional Landfill without first ensuring that the physical and chemical characteristics of the special wastes

had been determined through laboratory analyses performed on an annual basis, seven instances of violation represented by seven separate truck loads disposed at the landfill, occurring on January 18, 2008, February 28, 2008, April 11, 2008, April 18, 2008, May 15, 2008 and twice on May 23, 2008.

Violation No. 12

Failure to Document Special Waste Disposal Locations Contrary to the DMP

43. In violation of the SWR, 20.9.5.16.A(11) and 20.9.3.20.A NMAC, Respondent failed to comply with the terms of the approved DMP for OCD special wastes generated at Giant (Western) Refinery by failing to record or incorporate into the landfill's operating record which disposal cells received OCD special wastes, including the annotation of X, Y, and Z coordinates, seven instances of violation represented by seven separate truck loads disposed at the landfill, occurring on January 18, 2008, February 28, 2008, April 11, 2008, April 18, 2008, May 15, 2008 and twice on May 23, 2008.

Violation No. 13

Failure to Furnish Records and Plans for Inspection

44. In violation of the SWR, 20.9.5.16.E and 20.9.3.20.A NMAC, and contrary to Sections 109.A and 109.D of the facility's permit, Respondent failed to furnish multiple records and plans required by the SWR for operation of the Red Rocks Regional Landfill, as evidenced by the landfill manager's failure to locate and produce the facility's operating record, special waste DMPs (for wastes generated by either the Western Refinery or the Durango-McKinley paper plant), financial assurance documentation, special waste manifests documenting disposal of the Durango-McKinley paper pulp, a landfill gas management or methane monitoring plan, quarterly methane monitoring results, an approved ground water monitoring system plan and/or ground water monitoring plan, a leachate management plan and a Waste Screening Plan, one instance of violation, occurring on June 4 and 5, 2008.

Violation No. 14

Acceptance of Special Waste Without a Special Waste Manifest Contrary to the Permit

45. In violation of the SWR, 20.9.3.20.A NMAC, and contrary to Sections 702.C, 712.A and 712.F of the facility's permit, Respondent accepted multiple truck loads of special waste (industrial waste generated at the Durango-McKinley paper plant) at the Red Rocks Regional Landfill without accompanying special waste manifests, 278 instances of violation represented by 278 separate truck loads disposed at the landfill during the period of January 2008 through May 2008, with 49 instances of violation occurring during May 2008, as evidenced by truck loads arriving at the landfill on May 2, 2008 (three truck loads), May 5, 2008 (three truck loads), May 9, 2008 (four truck loads), May 12, 2008 (four truck loads), May 13, 2008 (three truck loads), May 15, 2008 (four truck loads), May 16, 2008 (four truck loads), May 19, 2008 (five truck loads), May 20, 2008 (four truck loads), May 24, 2008 (three truck loads), May 26, 2008 (three truck loads), May 27, 2008 (three truck loads), May 29, 2008 (three truck loads) and May 30, 2008 (three truck loads).

Violation No. 15

Failure to Operate a Solid Waste Facility in a Safe and Proper Manner

46. In violation of the SWR, 20.9.5.8.A(1), 20.9.2.8.C, 20.9.2.8.D, 20.9.2.10.B and 20.9.3.20.A NMAC, and contrary to Section 401.B.1 of the facility's permit, Respondent failed to operate the landfill in a safe and proper manner, as evidenced by Violation Nos. 1-14 of this Order, indicating a pattern of regulatory non-compliance and improper operations that created a public nuisance and potential hazards to the public health, welfare or the environment, one instance of violation, occurring on or before April 6, 2008 to on or after June 4, 2008 (a period of 60 days).

CIVIL PENALTY

47. Section 74-9-36.B of the SWA authorizes the assessment of civil penalties of up to Five Thousand Dollars (\$5,000) per day for each violation of the SWA or the SWR. The NMED hereby assesses a civil penalty of Three Hundred Seventy-One Thousand and Four Hundred Dollars (\$371,400) for Respondent's fifteen (15) violations. The penalty is calculated based on

the factors set forth in the NMED's Solid Waste Civil Penalty Assessment Policy and upon such other factors as justice may require. The individual penalty for each violation is:

<u>Violation</u>	<u>Amount</u>
No. 1 Failure to Apply Daily Cover	\$13,500
No. 2 Failure to Apply Intermediate Cover	\$31,500
No. 3 Failure to Control Litter	\$3,000
No. 4 Failure to Confine the Working Face to the Smallest Practical Area	\$13,500
No. 5 Failure to Store Scrap Tires in a Safe and Sanitary Manner	\$31,500
No. 6 Failure to Remove Scrap Tires in a Timely Manner	\$38,400
No. 7 Failure to Store Recyclables (Scrap Metal) in a Safe and Sanitary Manner	\$64,000
No. 8 Failure to Conduct Methane Monitoring	\$6,000
No. 9 Failure to Collect Leachate by a Method Approved by the Secretary	\$5,000
No. 10 Failure to Implement a Waste Screening Plan	\$5,000
No. 11 Acceptance of Improperly Characterized Special Waste Contrary to the DMP.....	\$21,000
No. 12 Failure to Document Special Waste Disposal Locations Contrary to the DMP.....	\$21,000
No. 13 Failure to Furnish Records or Plans for Inspection	\$5,000
No. 14 Acceptance of Special Waste Without a Special Waste Manifest Contrary to the Permit.....	\$49,000
No. 15 Failure to Operate a Solid Waste Facility in a Safe and Proper Manner	\$64,000

48. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed or hand delivered to Sally Worthington, Hearing Clerk, Office of the Secretary, NMED, Harold Runnels Building, Rm. N2150, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, New Mexico 87502-5469.

SCHEDULE OF COMPLIANCE

49. Based on the foregoing findings and conclusions, and pursuant to the SWA, NMSA 1978, § 74-9-36.A(1), Respondent is hereby ordered to comply with the following schedule of compliance:

A. Upon receipt of this Order, Respondent shall apply daily cover at the end of each day's operation, or more often if conditions warrant;

B. No later than thirty (30) days after receipt of this Order, Respondent shall apply and maintain intermediate cover on all areas of the landfill that have not received waste for 60 days or longer, or have not reached final elevation;

C. Upon receipt of this Order, Respondent shall clean all litter from within the confines of the facility's perimeter fence, and clean and dispose of all litter that has migrated beyond the facility's perimeter fence;

D. No later than thirty (30) days after receipt of this Order, Respondent shall develop and implement a plan to ensure that litter generated at the landfill is sufficiently controlled, both within and beyond the facility's permit boundary;

E. Upon receipt of this Order, Respondent shall maintain an active face (tipping area) that is kept to the smallest practical area and is routinely compacted;

F. Upon receipt of this Order, Respondent shall operate the tire recycling area in a safe and sanitary manner, such that scrap tire storage areas are completely segregated from storage areas for other recyclable materials, and such that dried vegetation is routinely removed from around the storage areas to reduce the risk of fire and disease vector harborage;

G. No later than sixty (60) days after receipt of this Order, Respondent shall submit to the NMED for review and approval a written plan describing actions to be taken that will reduce the number of scrap tires in storage at the landfill, such that the tire recycling area will no longer constitute a permanent storage area and loose scrap tires will be baled or otherwise utilized and removed from the landfill in a reasonable period of time;

H. Upon receipt of this Order, Respondent shall dispose of solid waste only within permitted waste disposal cells and shall refrain from stockpiling or intermixing solid waste with recyclable materials at the landfill's scrap tire and scrap metal storage areas;

I. Upon receipt of this Order, Respondent shall conduct routine methane monitoring on at least a quarterly basis, as required by the SWR and in accordance with the facility's approved Methane Monitoring Plan;

J. Upon receipt of this Order, Respondent shall collect leachate by a method approved by the Secretary, such that the discharge of leachate onto the ground or any area outside of the facility's liner is prevented;

K. Upon receipt of this Order, Respondent shall implement its Waste Screening Plan, including the performance of routine load inspections by properly trained personnel;

L. Upon receipt of this Order, Respondent shall ensure that all requirements of the special waste DMP have been met, including annual sampling, testing and annotation of disposal location, prior to the acceptance and disposal of any special waste requiring disposal under a DMP at the landfill;

M. Upon receipt of this Order, Respondent shall ensure that the landfill's permit and all plans and records required to be maintained as part of the landfill's operating record, as specified in 20.9.5.16.A through 20.9.5.16.F NMAC, are organized, available and furnished to representatives of the NMED when requested for the purpose of inspection;

N. Upon receipt of this Order, Respondent shall require the use of a special waste manifest for each load of special waste arriving at the landfill for disposal and shall comply with all applicable manifest requirements specified in 20.9.8.19.B through 20.9.8.19.G NMAC; and

O. Within forty-five (45) days of receipt of this Order, pay the penalty.

NOTICE

50. For failure to take corrective action and timely comply with the foregoing requirements of this Order, the Secretary of the NMED, pursuant to the SWA, NMSA 1978, §

74-9-36.C, may seek to assess additional civil penalties of not more than Ten Thousand Dollars (\$10,000) for each day of non-compliance with the Order.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

51. Under the SWA, § 74-9-36.G, this Order shall become final unless, no later than thirty (30) days after the Order is served, Respondent submits a written request to the Secretary for a public hearing to: Sally Worthington, Hearing Clerk, Office of the Secretary, NMED, Harold Runnels Building, Rm. N2150, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, New Mexico 87502-5469. A copy of this Order must be attached to the Request for Hearing.

52. Pursuant to 20.1.5.200.A(2)(a) NMAC governing the NMED's Adjudicatory Procedures, Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted.

53. Pursuant to 20.1.5.200.A(2)(b) NMAC, Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defenses not asserted in the Answer and Request for Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

54. Pursuant to 20.1.5.200.A(2)(c) NMAC, the Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge true and correct.

55. The public hearing shall be governed by the NMED's Adjudicatory Procedures, 20.1.5 NMAC.

FINALITY OF ORDER

56. This Order shall become final unless Respondent files a Request for Hearing and Answer within thirty (30) days after receipt of this Order. Unless a hearing is requested and an

Answer filed in writing, the penalty proposed in this order shall become due and payable as set forth in the Schedule of Compliance.

SETTLEMENT CONFERENCE

57. Whether or not Respondent submits a Request for Hearing and files an Answer, Respondent may confer with the NMED concerning settlement. The NMED encourages settlement consistent with the provisions and objectives of the SWA and the SWR. Settlement discussions do not extend the thirty (30) day deadline for filing an Answer and Request for Hearing, or alter the deadlines for this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference *pro se* (without legal counsel) or may be represented by legal counsel.

58. Any settlement reached by the parties must be consistent with the SWA and the SWR. Any settlement must be approved by the Secretary of the NMED and shall be a Stipulated Final Order signed by the parties. The Stipulated Final Order must contain all the requirements of 20.1.5.600 NMAC.

59. To explore the possibility of settlement in this matter, you may contact George W. Akeley Jr. (Chuck), Manager, Enforcement Section, Solid Waste Bureau, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, (505) 827-2924, to set up a meeting.

60. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

TERMINATION

61. This Order shall terminate when Respondent certifies that all the requirements of this Order have been met, and the NMED has approved such certification, or when the Secretary approves a Stipulated Final Order.



Jim Norton
Director, Environmental Protection Division
New Mexico Environment Department

Date 12/16/08

Certificate of Service

I hereby certify that the foregoing Administrative Compliance Order was mailed via certified mail, return receipt requested, No. 7008 0500 0001 1245 7828, postage prepaid on this 16th day of December, 2008, to the following person:

Billy Moore, Chairman
Northwest New Mexico Regional Solid Waste Authority
P.O. Box 984
Thoreau, New Mexico 87323


Sara Martinez, Administrative Secretary
Solid Waste Bureau